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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

Estate of Frank Hobel, Deceased.

KATHLEEN HOBEL, as Trustee, etc., et
al.,

Petitioners and Appellants,

v.

ZOOLOGICAL SOCIETY OF
SAN DIEGO et al.,

Claimants and Respondents.

D073377

(Super. Ct. No. P121954)

APPEAL from a judgment of the Superior Court of San Diego County, Julia C.

Kelety, Judge. Affirmed.

Kyle Harris; Jeffrey B. Harris and Laura K. Gantney, for Petitioners and
Appellants.

Beamer, Lauth, Steinley & Bond; Stephen A. Bond and Phillip A. Bond, for
Claimants and Respondents.

Kathleen Hobel (Kathleen), as trustee of two trusts established by her father-in-law and mother-in law Frank Hobel (Frank) and Mary (Mary) Hobel, respectively, and contingent remainder beneficiaries Jeannie Heine and Lynn Hobel, the daughters of Kathleen (sometimes collectively, petitioners), appeal an order and judgment of dismissal thereon sustaining without leave to amend a demurrer to a portion of their petition.

Petitioners asserted tort claims against Harry Duffield (Duffield),¹ the successor trustee of the Virginia Yorgin Trust (Virginia's Trust) and the long-time CPA of Virginia Carol Yorgin (Virginia), who was one of three children of Frank and Mary; and a "cause of action"² for a constructive trust against Duffield, on the one hand, and respondents and demurring parties Zoological Society of San Diego (Zoo) and the San Diego Humane Society (Humane Society) (sometimes collectively, charitable distributees), on the other hand.

Petitioners alleged that beginning in about 2006, Virginia, with the assistance of Duffield, improperly paid herself trustee's fees from two trusts she administered: the Frank Hobel Testamentary Trust (Frank's Trust), created when Frank died in 1979, and the revocable Mary Hobel Trust, as amended (Mary's Trust);³ that these trustee's fees were excessive and Duffield, who prepared Virginia's tax returns during her lifetime and

¹ Duffield is not a party to this appeal.

² As discussed *post*, a constructive trust is an equitable remedy and not a substantive cause of action. (See *PCO, Inc. v. Christensen, Miller, Fink, Jacobs, Glaser, Weil & Shapiro, LLP* (2007) 150 Cal.App.4th 384, 398 (*PCO*).)

³ Mary's Trust is not the subject of this appeal.

who became the successor trustee of Virginia's Trust after her death in September 2013, was aware of these unlawful and excessive payments; and that after Virginia's death, Duffield concealed Virginia's "theft of trust assets" by not providing petitioners with Virginia's tax returns from 2005 through 2011, when they allege Virginia " 'stole the vast bulk of the trustee's fees.' "

Petitioners further alleged that after Virginia died, Duffield transferred money from various accounts held by Virginia into Virginia's Trust, which, after paying himself for administering her estate and paying his lawyer, he then distributed to the charitable distributees as provided under the terms of Virginia's Trust. Petitioners concede the charitable distributees had no "actual knowledge of the aiding and abetting and the breaches of fiduciary duty" that are the subject of this litigation.

On appeal, petitioners contend the court erred in sustaining on statute of limitations grounds the demurrer of charitable distributees to the third "cause of action" for imposition of a constructive trust. Although they concede their March 2017 action against Virginia's estate is time-barred pursuant to Probate Code section 19400, which incorporates by reference under Code of Civil Procedure section 366.2 a one-year limitations period measured from the date of a decedent's death, petitioners nonetheless contend they "are not suing Duffield, or attempting to reach the funds held by [the Zoo and/or the Humane Society] as creditors of Virginia's estate," but instead are "suing as tort victims of Duffield's wrongful conduct in administering the estate and [Virginia's Trust]."

As we explain, we independently conclude the probate court properly sustained the demurrer of charitable distributees without leave to amend. Affirmed.

FACTUAL AND PROCEDURAL BACKGROUND

Frank and Mary had three children, Frank Eugene Hobel (Gene), Duane Warren Hobel (Duane), and Virginia. On Frank's death in 1979, the probate court established Frank's Trust. Frank's Trust provided that 33 and 1/3 percent of his residual estate was to go to Duane "in trust" for Duane's benefit during his lifetime, with Gene serving as trustee. Frank's Trust further provided that upon Duane's death, the balance of the trust estate would be distributed to siblings Gene and Virginia, if they survived Duane, or otherwise to the issue of Gene and Virginia.

Gene died in 2006, and is survived by Kathleen, his wife. Upon Gene's death, Virginia served as sole successor trustee of Frank's Trust until her death in September 2013. In August 2014, Kathleen was appointed successor trustee of Frank's Trust for the benefit of Duane, who was alive at the time of the filing of the petition.

Mary in March 1989 established Mary's Trust. The terms of Mary's Trust called for the creation of a "sub-trust" for the benefit of Duane to continue for his lifetime. Gene and Virginia were named co-trustees of Mary's Trust, including for the separate trust of their brother Duane. Following Gene's death, Virginia alone continued in that role until her death. Kathleen in 2014 also became successor trustee of Mary's Trust and the sub-trust for her brother-in-law Duane.

Thus, at the time of the filing of the petition, the contingent remainder beneficiaries of Frank's Trust (and Mary's Trust) were the daughters of Kathleen and Gene, inasmuch as Virginia died without issue.

The Petition

As noted, in March 2017, Kathleen, along with her daughters filed their petition. It asserted three causes of action: (1) aiding and abetting breach of fiduciary duty (Duffield only), (2) breach of duties as trustee of Virginia's Trust (same), and (3) imposition of constructive trust (Duffield and charitable distributees, as noted).

The petition alleged that after Gene died, Virginia over the next several years improperly withdrew about \$545,000 from Frank's Trust (and Mary's Trust) as compensation for administering the trusts. The petition further alleged this amount was "more than 50% of the combined value of the trusts," was "excessive and not permitted by law," and was reported as income in tax returns Duffield prepared on behalf of Virginia and the various trusts.

Following Virginia's death, Duffield, as executor of her estate and as successor trustee of Virginia's Trust, filed a petition for instructions, as amended, with the probate court, seeking an order allowing him to transfer money from her accounts into Virginia's Trust. Pursuant to the court's order, Duffield paid himself a trustee's fee of about \$64,400 and his attorney about \$65,000. Duffield then distributed the balance of Virginia's Trust to the Zoo and the Humane Society, with each beneficiary receiving \$995,000. The petition alleged that "Duffield knew that the funds . . . were the product of Virginia's breaches of fiduciary duty to . . . [Frank's Trust]"; and that on "information and belief,

Duffield actively concealed Virginia's wrongdoing from Petitioners in order to secure for himself more than \$64,000 in trustee's fees from Virginia's ill-gotten gains."

In their third "cause of action" for imposition of constructive trust, petitioners collectively referred to Duffield and the charitable distributees as "[r]espondents" while alleging they "took and/or received property by fraud, accident, mistake, undue influence, the violation of a trust, and/or other wrongful acts, as alleged herein." Petitioners further alleged that "[r]espondents exchanged no valuable consideration and/or had actual knowledge of the aiding and abetting and the breaches of fiduciary duty"; that a constructive trust is "required in order to prevent Respondents from being unjustly enriched at the expense of Petitioners, the trustee and beneficiaries" of Frank's Trust; that the property received by Respondents is "lawfully the property of" Frank's Trust; and that "Petitioners therefore seek a constructive trust over property received by Respondents, to which they are not justly entitled."

As relevant here, in their prayer for relief petitioners sought an order requiring the Zoo and the Humane Society to "account for all funds [they] received" from Virginia's Trust and to "transfer such funds back to Petitioners."

Court's Ruling

In sustaining the demurrer without leave to amend, the probate court ruled as follows: "Respondents concede that a constructive trust as asserted in the third cause of action is a type of remedy and not a cause of action, in and of itself. However, a demurer does not lie to a type of damage or remedy. [Citation.] However, the Charitable Distributees are named only in the third cause of action. They are not named in any other

cause of action. In fact, the Petitioners agree that the Zoo and the Humane Society engaged in no misconduct; they merely received the gifts made to them in Virginia's Trust. Thus, demurrer is proper in this case, because with or without the third cause of action, the Petition does not state facts sufficient to constitute a cause of action against the Charitable Distributees. (C[ode] C[ivil] P[roc.], §[] 430.10(e)[.] (CCP).)

"The Probate Code explains the circumstances under which a trust beneficiary, innocent of misconduct, may be obliged to return a gift. Section 19400⁴ of the Probate Code] provides that trust beneficiaries may be personally liable for creditor's claims against a decedent for up to a year after the decedent dies. In this case, if the Petitioners had filed a creditor's claim against Virginia's estate in the year after Virginia's death, the Charitable Distributees may have been required to return the gifts to them from Virginia if the claims were proven. [Probate Code s]ection 19400 protects creditors from having the estate depleted before they can recover on their claims.

⁴ Probate Code Section 19400 provides: "Subject to Section 366.2 of the [CCP], if there is no proceeding to administer the probate estate of the deceased settlor, and if the trustee does not file a proposed notice to creditors pursuant to Section 19003 and does not publish notice to creditors pursuant to Chapter 3 (commencing with Section 19040), then a beneficiary of the trust to whom payment, delivery, or transfer of the deceased settlor's property is made pursuant to the terms of the trust is personally liable, to the extent provided in Section 19402, for the unsecured claims of the creditors of the deceased settlor's probate estate." CCP section 366.2, subdivision (a) in turn provides: "If a person against whom an action may be brought on a liability of the person, whether arising in contract, *tort, or otherwise, and whether accrued or not accrued*, dies before the expiration of the applicable limitations period, and the cause of action survives, an action may be commenced within *one year after the date of death, and the limitations period that would have been applicable does not apply*." (Italics added.)

"Petitioners state emphatically that they are not relying upon [Probate Code] section 19400 in their efforts to recover Virginia's gifts to the Charitable Distributees. [Citation.] No doubt this is because more than a year has passed. However, Petitioners do not explain what other statute or case law would require a beneficiary to disgorge a gift.

"During oral argument, counsel for the Petitioners contended that the Petition alleges both (1) that Mr. Duffield aided and abetted Virginia's alleged misconduct during her lifetime; and (2) that after Virginia died, Mr. Duffield concealed Virginia's misconduct through improper notice to Petitioners.

"As to Virginia's alleged misconduct, recovery against the Charitable Distributees is barred by [Probate Code] section 19400 and CCP section] 366.2 because more than one year has passed since her death. The court agrees that naming a living defendant as an aid[e]r and abettor cannot be a method to extend the time during which a trust beneficiary might be required to return a gift.

"As to Mr. Duffield's alleged misconduct, both pre- and post-death [of Virginia], Petitioners appear to contemplate that his potential personal liability should be satisfied through Virginia's gifts to the Charitable Distributees. The court is aware of no authority for this proposition.

"Read together, the provisions of the Probate Code and the Code of Civil Procedure strike a balance between the interests of a deceased person's creditors; the interests of heir and beneficiaries in certainty as to their gifts, and the prompt administration of estates and trusts. A result that would require a trust beneficiary to

return gifts more than three years after the decedent's death would violate these important matters of public policy.

"Accordingly, the demurrer is sustained. Because the Petitioners will be unable to turn back the hands of time and file a timely claim, the court will not grant leave to amend."⁵

DISCUSSION

A. *Standard of Review*

" ' "On appeal from an order of dismissal after an order sustaining a demurrer, our standard of review is de novo, i.e., we exercise our independent judgment about whether the complaint states a cause of action as a matter of law." ' (*Los Altos El Granada Investors v. City of Capitola* (2006) 139 Cal.App.4th 629, 650.) In reviewing the complaint, [or in this case, the petition,] 'we must assume the truth of all facts properly pleaded by the plaintiffs, as well as those that are judicially noticeable.' (*Howard Jarvis Taxpayers Assn. v. City of La Habra* (2001) 25 Cal.4th 809, 814.) We may affirm on any basis stated in the demurrer, regardless of the ground on which the trial court based its ruling. (*Carman v. Alvord* (1982) 31 Cal.3d 318, 324.)" (*Krolkowski v. San Diego City Employees' Retirement System* (2018) 24 Cal.App.5th 537, 549.)

⁵ The court in its order went on to find that petitioners had improperly included claims against Duffield arising from the administration of Mary's Trust or the sub-trust for Duane created thereunder, which, to reiterate, is not the subject of this appeal. The court on its own motion struck those claims from the petition, and ordered petitioners to file a first amended petition. However, pursuant to a stipulation of the parties, the court subsequently entered an order of dismissal with prejudice as to charitable distributees and stayed all other proceedings pending the resolution of this appeal.

When a complaint (or a petition) discloses on its face that the statute of limitations has run on one or more causes of action alleged therein, the operative pleading fails to state facts sufficient to constitute a cause of action as a matter of law. (*ABF Capital Corp. v. Berglass* (2005) 130 Cal.App.4th 825, 833.) For purposes of reviewing a demurrer, we do not accept "contentions, deductions, or conclusions of fact or law." (*Yvanova v. New Century Mortgage Corp* (2016) 62 Cal.4th 919, 924.)

B. *Constructive Trust*

"A constructive trust is an involuntary equitable trust created by operation of law as a remedy to compel the transfer of property from the person wrongfully holding it to the rightful owner. [Citations.] The essence of the theory of constructive trust is to prevent unjust enrichment and to prevent a person from taking advantage of his or her own wrongdoing. [Citations.]" (*Communist Party v. 522 Valencia, Inc.* (1995) 35 Cal.App.4th 980, 990 (*Valencia*).)

The principal circumstances in which a constructive trust is imposed are set forth in Civil Code sections 2223 and 2224. Civil Code section 2223 provides: "One who *wrongfully* detains a thing is an involuntary trustee thereof, for the benefit of the owner." (Italics added.) Civil Code section 2224 provides: "One who gains a thing by fraud, accident, mistake, undue influence, the violation of a trust, or *other wrongful act*, is, unless he or she has some other and better right thereto, an involuntary trustee of the thing gained, for the benefit of the person who would otherwise have had it." (Italics added.)

"Under these statutes and the case law applying them, a constructive trust may only be imposed where the following three conditions are satisfied: (1) the existence of a *res* (property or some interest in property); (2) the *right* of a complaining party to that *res*; and (3) some *wrongful* acquisition or detention of the *res* by another party who is not entitled to it." (*Valencia, supra*, 35 Cal.App.4th at p. 990; see *Weiss v. Marcus* (1975) 51 Cal.App.3d 590, 600 [noting a constructive trust may be imposed "where there is a wrongful acquisition or detention of property to which another is entitled"].)

However, property cannot be subject to a constructive trust for the benefit of another unless there is "some basis for determining that [the party seeking the constructive trust] actually owned or was rightfully entitled to possession" of the *res*. (*Valencia, supra*, 35 Cal.App.4th at p. 991 [refusing to impose a constructive trust on companies' assets in the absence of evidence that the party seeking the trust actually possessed an ownership interest in those assets].)

C. *Analysis*

As noted *ante*, petitioners contend the court erred as a matter of law in sustaining the demurrer to their third "cause of action" for imposition of constructive trust because they are not suing as creditors of Virginia's estate, but instead as direct "tort victims" of Duffield's wrongful conduct "in administering the estate" and "Virginia's Trust." We find this contention unavailing.

First, as noted by the probate court and as shown by the record, the charitable distributees were only named in appellant's third "cause of action" for constructive trust. As further noted, however, a constructive trust is not a substantive claim but instead

merely an equitable remedy. (See *PCO*, *supra*, 150 Cal.App.4th at p. 398; *American Master Lease LLC v. Idanta Partners, Ltd.* (2014) 225 Cal.App.4th 1451, 1485 (*American Master*) [noting a "'constructive trust is not a substantive device but merely a remedy'" [citation omitted].) For this reason alone we conclude the court properly sustained the demurrer of the charitable distributees.

Second, we also conclude the court properly sustained the demurrer without leave to amend because petitioners admitted that the charitable distributees had no knowledge of any wrongdoing by Virginia and/or Duffield, and thus, did nothing wrong in connection with their receipt of the distributions from Virginia's Estate.

"Judicial admissions may be made in a pleading, by stipulation during trial, or by response to request for admission. [Citations.] Facts established by pleadings as judicial admissions "'are conclusive concessions of the truth of those matters, are effectively removed as issues from the litigation, and may not be contradicted, by the party whose pleadings are used against him or her.'" [Citations.] "'[A] pleader cannot blow hot and cold as to the facts positively stated.'" [Citation]' [Citation.] [¶] . . . 'The pleadings allowed in civil actions are complaints, demurrers, answers, and cross-complaints.' [Citation.] When these pleadings contain allegations of fact in support of a claim or defense, the opposing party may rely on the factual statements as judicial admissions. [Citation.]" (*Myers v. Trendwest Resorts, Inc.* (2009) 178 Cal.App.4th 735, 746.)

Because one of the elements of a constructive trust is the "*wrongful* acquisition or detention of the res by another party who is not entitled to it" (see *Valencia*, *supra*, 35 Cal.App.4th at p. 990), and because the charitable distributees' acquisition of the res, in

this case the distributions from Virginia's estate, involved no wrongdoing by them as a matter of law, we conclude the court properly sustained their demurrer without leave to amend. (See *ibid.*; *Weiss, supra*, 51 Cal.App.3d at p. 600 [noting a constructive trust requires "a wrongful acquisition or detention of property to which another is entitled"].)

Third, our conclusion is further supported by the fact that petitioners may proceed directly against Duffield for his alleged tortious conduct in administering Virginia's estate and/or Virginia's Trust, and seek to recover from *him*, as opposed to the charitable distributees, any property he may have wrongfully acquired as a result and/or damages, if any, he proximately caused petitioners.⁶

Fourth, our decision in the instant case reflects the important public policies of expeditious estate administration in our probate courts. (See *Bradley v. Breen* (1999) 73 Cal.App.4th 798, 801 (*Bradley*) [noting the one-year limitations period in CCP section 366.2⁷ "effectuate[s] the strong public policies of expeditious estate administration"].) As noted, petitioners filed their petition more than one year after Virginia's death. As a result, they are unable to obtain any relief from Virginia's estate as a result of *her* alleged breaches of fiduciary duty in administering Frank's Trust for the benefit of her brother Duane, despite the fact their petition contains myriad allegations of wrongdoing by Virginia.

⁶ We say "may" and "alleged tortious conduct" because the issue of Duffield's liability, if any, to petitioners is not the subject of this appeal.

⁷ All further statutory references are to the Code of Civil Procedure.

Indeed, shortly after the Legislature in 1990 repealed and reenacted the Probate Code, it amended former section 353—the predecessor to section 366.2—to provide for a one-year statute of limitations for claims against a decedent that survive his or her death. (See *Bradly, supra*, 73 Cal.App.4th at p. 801.) A one-year limitations period was recommended by the 1990 Law Revision Commission based on several considerations including that one year was "usually sufficient time for all debts to come to light" (*ibid*); and that limiting potential liability of the decedent was "sound public policy" as it would "avoid delay and procedural complication of every probate proceeding for the rare claim that might arise more than a year after the decedent's death." (*Ibid.*)

In *Bradley*, the decedent pleaded guilty to a criminal charge of lewd acts with a minor. The decedent died in prison in 1993. In 1997, the minor sued the defendants, alleging that they aided and abetted the molestation, but not the decedent's estate. The defendants, however, cross-complained against the estate for indemnity and other relief. The estate demurred to the cross-complaint based on the statute of limitations in section 366.2, which the court sustained without leave to amend as against the estate and its personal representatives. The *Bradley* court affirmed. (*Bradley, supra*, 73 Cal.App.4th at pp. 800–801.)

The court in *Bradley* rejected the argument that it was inequitable to apply section 366.2 to a cross-action for equitable indemnity because the defendants seeking indemnity from the estate had not paid a judgment or settlement within one year of the decedent's death and thus, could not have filed their claims any sooner. (*Bradley, supra*, 73 Cal.App.4th at p. 805.) In reaching its decision, the court in *Bradley* focused on the

public policy underlying section 366.2, as noted *ante*, and what it found was the statute's "clear language" that it applied to causes of action " 'whether accrued or not accrued.' (Stats. 1996, ch. 862, § 1.)" (*Bradley*, at p. 804.)

Based on section 366.2, the court in *Bradley* recognized that the "Legislature has made a public policy determination that effectively limits or qualifies the right of indemnity. The Legislature has determined that the one-year statute of limitations will best effectuate the strong public policy of expeditious and final estate administration, despite the possibility that in a rare case such as the present one, an action for equitable indemnity may be foreclosed. This court has neither the authority nor the inclination to substitute its judgment for that of the Legislature on such policy matters. Our limited role in interpreting statutes is to follow the Legislature's intent as exhibited by the plain meaning of the statutory language, whatever we may think of the wisdom, expediency, or policy underlying the act. (*People v. Loeun* (1997) 17 Cal.4th 1, 9; *California Teachers Assn. v. Governing Bd. of Rialto Unified School Dist.* (1997) 14 Cal.4th 627, 632.)" (*Bradley*, *supra*, 73 Cal.App.4th at pp. 805–806; compare *Dacey v. Taraday* (2011) 196 Cal.App.4th 962, 984 [refusing to apply section 366.2 "when the decedent did not commit the injury or did not already have a collectible debt at the time of death"].)

Bradley informs our decision in the instant case. Instead of limiting their action to Duffield, petitioners named the Zoo and the Humane Society as parties in this litigation precisely because they seek to recover the distributions received by the charitable distributees from Virginia's estate. That is, petitioners are seeking to use the equitable remedy of a constructive trust to do an "end run" around section 366.2 and its one year

statute of limitations, which would otherwise apply in this case, inasmuch as it was Virginia—during her lifetime—who allegedly "stole" trust funds from Frank's Trust.

In our view, allowing petitioners to avoid the statute of limitations bar in section 366.2 would seriously undermine the important public policies of the prompt administration of estate administration. For this separate and independent reason, we conclude the court properly sustained the demurrer of the charitable distributees without leave to amend.

Petitioners nonetheless cite to a line of cases including *American Master*, *supra*, 225 Cal.App.4th 1451, to support their novel theory that a "cause of action" for a constructive trust may be maintained against the charitable distributees, despite the fact they filed their action more than one year after Virginia's death.

The issue in *American Master* was whether the defendants could be liable for aiding and abetting a breach of fiduciary duty by the principal when they did not independently owe such a duty to a plaintiff. (*American Master*, *supra*, 225 Cal.App.4th at p. 1458.) The defendants in *American Master* argued that there was "no sound policy reason to distinguish between liability for conspiracy to breach a fiduciary duty and liability for aiding and abetting a breach of fiduciary duty by requiring that a conspirator but not an aider and abettor owe a fiduciary duty to the plaintiff." (*Id.* at p. 1471.)

The court in *American Master* rejected this argument. Although noting there was a "close relationship between conspiracy and aiding and abetting" (*American Master*, *supra*, 225 Cal.App.4th at p. 1474), the court nonetheless found that tort liability arising from a civil conspiracy " 'presupposes that the coconspirator is legally capable of

committing the tort, i.e., that he or she owes a duty to plaintiff recognized by law and is potentially subject to liability for breach of that duty.' ([*Applied Equipment Corp. v. Litton Saudi Arabia Ltd.* (1994) 7 Cal.4th 503,] 511 [*Applied Equipment*].)" (*American Master*, at pp. 1473–1474; see *Kidron v. Movie Acquisition Corp.* (1995) 40 Cal.App.4th 1571, 1597 [following *Applied Equipment* in ruling that a "nonfiduciary cannot conspire to breach a duty owed only by a fiduciary"].) However, unlike conspiracy to breach a fiduciary duty, the court in *American Master* found aiding and abetting a breach of fiduciary duty did *not* require that a defendant owe a fiduciary duty to plaintiff. (*American Master*, at pp. 1476–1478.)

We have no quarrel with cases such as *American Master*, which merely stand for the proposition that a defendant may be liable for aiding and abetting a breach of fiduciary duty even when that defendant does not owe such a duty directly to the plaintiff. Indeed, the parties here do not dispute that Duffield is potentially liable to petitioners for his alleged independent wrongdoing, as set forth in the petition, regardless of whether he owed petitioners—as opposed to Virginia, Virginia's Trust, Frank's Trust, and/or Mary's Trust—a duty of care. However, *American Master* and other cases like it do not provide for the imposition of a constructive trust against distributions made to innocent third-party beneficiaries such as the Zoo and the Humane Society, based on the principal trustor's liability for potential breaches of fiduciary duty that occurred over the course of

years before the trustor's death, when the action against such innocent third-party beneficiaries was brought more than a year after the trustor's death.⁸

DISPOSITION

The judgment in favor of the Zoo and the Humane Society is affirmed. The charitable distributees are entitled to their costs of appeal.

BENKE, J.

WE CONCUR:

McCONNELL, P. J.

DATO, J.

⁸ In light of our decision, we deem it unnecessary to reach the additional arguments of the charitable distributees.